

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

VOLUME 7 OF 20

UNITED STATES OF AMERICA

EP:13-CR-0370-DG

v.

EL PASO, TEXAS

MARCO ANTONIO DELGADO

September 6, 2016

**STATUS HEARING**

THE HONORABLE DAVID C. GUADERRAMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (Open court.)

2 THE COURTROOM DEPUTY: EP:13-CR-370, Marco Antonio  
3 Delgado.

4 MS. KANOF: Good afternoon, Your Honor. Debra Kanof,  
5 Anna Arreola and Jose Luis Gonzalez for the United States.

6 THE COURT: Good afternoon, Ms. Kanof.

7 MR. HANSHEW: Good afternoon, Your Honor. Erik  
8 Hanshaw and Maureen Franco on behalf of Mr. Delgado.

9 THE COURT: And good afternoon, Mr. Hanshaw.  
10 I think we set this matter on your request.

11 MR. HANSHEW: If I may, Judge.

12 THE COURT: Yes, sir.

13 MR. HANSHEW: We -- last week -- I'll go through a set  
14 of chronology -- last Wednesday afternoon, we received the  
15 first set of documents from the government in this case which  
16 were -- I have a copy here and they're double-sided. The first  
17 batch was about 270 pages of untranslated Spanish documents.  
18 They're an opinion by the Secretario in Mexico, as to -- in the  
19 first batch, as to the lead legal counsel for C.F.E. and the  
20 reprimand and opinion on -- as it relates to his involvement  
21 and failings and the such on the contract that's part of this  
22 case, Judge.

23 The following morning, Thursday, September the 1st,  
24 about eight-something in the morning, the government provided  
25 also via disk, due to it's volume as well, another opinion

1 which I have here, double-sided, that's also untranslated in  
2 Spanish, as it relates to one of the chief engineers on this  
3 contract, the C.F.E., M.P.S.A. and F.G.G. contract, Judge.

4 And I want to make clear for the record that the  
5 government -- these were not promulgated or decided until  
6 August 3rd or 4th based on the dates of the documents, and we  
7 believe that, you know, the government, Ms. Arreola, handed  
8 these over to us contemporaneous to her receiving them as well.  
9 So this is not, you know, there's no complaints, and we  
10 appreciate and told her as much already that we appreciate the  
11 timely disclosure of these documents. But what that has led to  
12 obviously is that we're here having to ask for a continuance in  
13 this case, Judge. These documents, as I've mentioned, are --  
14 there's no translations for it, let alone any type of certified  
15 translations.

16 In our review of these and reviewings with our client,  
17 you know, they go to the heart of what this case is about. And  
18 in fact, they impune to C.F.E. employees, lead employees that  
19 were involved in this, so much so that we've learned that it's  
20 the government's intention not to bring these two any longer,  
21 one, which is the engineer, Mr. Buendia, the result of the  
22 order in here that he was actually terminated from C.F.E. So  
23 we spoke with on Friday, Ms. Franco and I, and we contacted the  
24 C.F.E. lawyer, Mr. Buendia is now no longer in the control of  
25 C.F.E. and/or as part of the MLAT or any type of agreement and

1 is not being brought by the government. The government  
2 provided the name and the contact number for Mr. Buendia's  
3 lawyer. We called that number and left a voicemail on Friday  
4 as well. To date, we've received no return call.

5 And then we learned late Friday that the government  
6 has no intention of bringing Mr. Moreno, Francisco Moreno. He  
7 is the counsel who was involved in this case. We believe  
8 that's significant in telling of these reports, these opinions  
9 about their misconduct and misfeasance, and that previously,  
10 those two -- the C.F.E. attorney told us those two individuals  
11 had actually been flown out from Mexico City to El Paso to meet  
12 and be prepared by the government counsel in this case. And  
13 now they are no longer coming. They're off in Mexico City,  
14 Judge.

15 We also, on Thursday last week, I contacted our  
16 translator who had worked on the previous translations to check  
17 on her availability over the next couple of months as well as  
18 get an estimate of the amount of time it would take for this  
19 type of document and the volume of it. Those are the two  
20 qualifiers that they -- to get an estimate on; however, her  
21 estimate was about a three-month period. What it was that she  
22 said they could do about ten pages a day, and we have about  
23 600 pages of document, which would be 60 days if you were to be  
24 working every single day, which obviously, you know, she's not  
25 going to be able. She works for this court as well as Las

1 Cruces and has other projects. You know, a conservative  
2 estimate from her was three months. From our prior hiring of  
3 her I can tell you, you know, we hired her and it took the  
4 entirety of the summer to do about 400 pages that we had  
5 translated and provided to the government last week, Judge.

6 So the first phase of this in terms of our request for  
7 continuance is to get these translations done so that we can  
8 have them, have them be available so that we can, you know,  
9 submit them to the Court as proper evidence and have a  
10 certified translation. It will also then, at that point, we  
11 are going to, because of what's happened with these two what  
12 were government witnesses and now non-Government witnesses,  
13 is initiate proceedings for extraterritorial discovery as it  
14 relates to these two.

15 It was made clear to us that Mr. Buendia, since he's  
16 terminated, is no longer in any C.F.E. control, so we're going  
17 to have to try to track him down in Mexico City ourselves and try  
18 to initiate some type of proceeding. You know, we've been  
19 looking at Rule 15 proceedings as well as some of the other  
20 rules of, you know, extraterritorial discovery, but those we  
21 can't even initiate, so we actually have the translations,  
22 because those are what would be the subject to, for example,  
23 depositions and such, Judge.

24 THE COURT: Why is all of this relevant about those  
25 two?

1 MR. HANSHEW: About those two individuals?

2 They are the two C.F.E. employees that were the  
3 integral in the negotiation and execution of the contract  
4 that's the subject of the indictment, Judge.

5 MS. KANOF: I have to object. That's not in the  
6 statement of facts of the case. They didn't have anything to  
7 do with negotiations at all.

8 THE COURT: But they did with the execution?

9 MS. KANOF: Nor the execution, Your Honor. I have a  
10 lengthy response to many misstatements that have been made,  
11 Your Honor, perhaps misunderstandings, including that this  
12 wasn't a surprise, and we had already provided some documents  
13 with regard to both of these individuals and also with regard  
14 to whether we were going to call them or not. I also have law  
15 with regard to their admissibility, because the government does  
16 adamantly oppose the continuance.

17 THE COURT: Here's what I thought this case was about.  
18 The Mexican power company needed generators, so they were going  
19 to bid it out. Your client and the guy that ignored my  
20 subpoena formed a corporation whose only purpose was to bid on  
21 the contract and then they were going split the profit 67/23.  
22 That was its only function.

23 So the Mexican government puts out the bids. Your  
24 client wins the bids. They get Mitsubishi to provide the  
25 generators. The power company pays you or your client;

1 Mitsubishi's paid. Mexico's got their generators. All that's  
2 left is 67/23 split of the profits.

3 Why does something about those two guys have anything  
4 to do with that?

5 MR. HANSHEW: Judge, referring to the superseding  
6 indictment here, it discusses this equipment, the agreements,  
7 the collateral, the pledge, all of these components that were  
8 negotiated between all of these parties; C.F.E., Mitsubishi as  
9 well, as well as F.G.G., the corporations created. And what  
10 the government claim, as it relates to fraud or frauds in this  
11 case in part, is that somehow Mr. Delgado acted outside of what  
12 the terms of the specifications and the contracting documents  
13 that he acted outside of those.

14 THE COURT: That's in relation to pledging the  
15 generators as collateral for the support of those generators on  
16 down the line.

17 MR. HANSHEW: Right.

18 And what these documents show, these individuals as  
19 found by the Mexican government, how they failed to create  
20 and/or have the proper clauses or compliance with  
21 specifications both in terms of the economics as well as the  
22 technical compliance as it relates there. In other words, what  
23 you have is you have the Mexican government saying these two  
24 folks who were leads in their contract didn't ensure that the  
25 contract included the right provisions to protect from a bad



1 contract in the end.

2 And so you've got -- in short, you've got a contract  
3 that we, you know, one of the defenses we have obviously, is  
4 that the contract didn't prohibit Mr. Delgado from doing any of  
5 the things that he did or failed to do in this case.

6 THE COURT: Now what does that have to do with this  
7 case?

8 If the contract didn't meet up to Mexican law, it  
9 didn't meet up to Mexican law, but does that have something to  
10 do with this indictment?

11 MR. HANSHEW: Right, because it has to do with what  
12 the contract itself requires or not, what it allows individuals  
13 on each side of this to come to the table with and what their  
14 respective obligations, responsibilities and authorities are  
15 that directs into it.

16 THE COURT: Is the government's case somehow built  
17 upon a breach of that contract?

18 MR. HANSHEW: It's certain individuals had authority  
19 or not to do what they did, in other words, the terms of this  
20 clause.

21 THE COURT: If that's governed by the terms of the  
22 contract, why is it important what the Mexican government  
23 thinks about the two guys that didn't do what they were  
24 supposed to do under Mexican law in ensuring the contract had  
25 those provisions, why is that relevant?

1 MR. HANSHEW: Well, because they didn't ensure, for  
2 example, that certain economic portions of the contract  
3 complied with what was needed to protect the Mexican interests  
4 on the contract.

5 THE COURT: What difference does it make? If it  
6 didn't happen it didn't happen. This is what we're basing the  
7 criminal proceeding on, not what the contract should have been,  
8 what the contract was. So how is it relevant?

9 MR. HANSHEW: Well, because these opinions have line  
10 by line of here is what the specs were, here's what the  
11 requirements were, here is the failing of it and here's the  
12 result of it.

13 And remember, Judge, again, these were two individuals  
14 who are the government's main witnesses for C.F.E. They were  
15 bringing 'em here. They brought them. A C.F.E. lawyer  
16 themselves told us they were bringing them here to get up and  
17 talk about, in this court, about this trial and the indictment  
18 what the terms of this were and what their relationships were  
19 as related to the obligations. And now it's turned out that  
20 they failed at it. I mean, it obviously is material to us to  
21 point out, here are these individuals who, because of what they  
22 did in their contracting and how it relates to the contract and  
23 what we failed to include and stuff, makes Mr. Delgado, he is  
24 not the culpable player in terms of any type of fraud as it  
25 relates to these contracts. It goes hand-in-hand. Its why

1 they were bringing them.

2 THE COURT: Is the government charging Mr. Delgado  
3 with fraud because the contract didn't conform from Mexican law  
4 or are they charging him with the pilfering the proceeds of the  
5 profits?

6 MR. HANSHEW: They're charging him with fraud as that  
7 relates to the contract, Judge. That's what they are charging.

8 THE COURT: The one thing relating to the contract was  
9 pledging the generators for the service contract for the  
10 generators.

11 MR. HANSHEW: Right.

12 THE COURT: And that's it though.

13 What does it have to do with these two guys?

14 MR. HANSHEW: In their job, which their job was to  
15 excuse and comply with the contract requirements for this type  
16 of a bid so that it met up with the specs, technical specs and  
17 the financial specs, had comported with what their arguments  
18 were, it arguably, for example, could've pro- -- then there  
19 could have been a prohibition against, you know, the conduct  
20 that's alleged against in Delgado. But if it's not and what  
21 they did shows otherwise, you know, you've got -- they have a  
22 problem. I mean, we know they have a problem, Judge. They're  
23 not -- they're jetting them to Mexico City? These two were  
24 flown out here before, are now gone, it's exculpatory. It is  
25 exculpatory as it relates to this.

1 THE COURT: Well, I'll give you an opportunity to have  
2 a hearing to show me how that's exculpatory, but let me -- I  
3 want you to finish before Ms. Kanof.

4 MR. HANSHEW: And if I just can, Judge, part of the  
5 difficulty in this is that we don't have a full certified  
6 translation of this. So you know what I'm explaining and  
7 arguing to the Court is based off of, you know, a few days of  
8 madly trying to get through there, but it's enough in our  
9 opinions and our office having gone through it and, you know,  
10 asking other people in assistance in looking at this that, you  
11 know, moving forward in trial at this stage, when you receive  
12 this number of voluminous documents that relate directly to the  
13 two individuals there, it it is in our -- we can't in good  
14 conscience, you know, move forward in the trial in this case  
15 without having any of these ready to be briefed to be able to  
16 engage in a full discourse that we're having right now, for  
17 example, Judge, it would be one thing.

18 You know, I mean I could've probably handled a set of  
19 English documents like this and come in here, they were from a  
20 U.S. court, and you know be able to try to apply contract  
21 principles and criminal law and those things like that. I  
22 could've made a good shot at that with the Court. But to come  
23 in here and to try to, you know, layout the entirety of the  
24 case or to prove that it's exculpatory or not, that's a mere  
25 impossibility on what we were given.

1           Again, no fault of their own, but it is what it is,  
2       which is 600 pages of untranslated documents that relate to  
3       these two individuals that were the government witness that  
4       related to the contract that's referenced and discussed in this  
5       case throughout. I mean, these are -- these are what -- the  
6       discovery in this case. I mean we were provided with the  
7       contract. We were provided, you know, all of the different  
8       documents related to the contract by the government previously  
9       in this case. They've turned them in as potential exhibits in  
10      this case, so it's hard to see how, you know, everything that  
11      they've turned in relating to this contracts and talking about  
12      this deal and all of that, you know, when there's now something  
13      that's adverse to the contract all of a sudden to step back and  
14      say well the contract didn't have anything to do with it.

15           And I would also just say respectfully to the Court,  
16      you know, we don't -- I know we have a burden to ask for a  
17      continuance in this case, but I don't think that that burden  
18      requires us proving up here at a hearing today that this is  
19      exculpatory to the nth degree in terms of the law, Judge. I  
20      just want to make sure. I mean we're -- I'm trying to put it  
21      out there the best I can for this, but for us to have to have  
22      to, you know, mouth and put on our whole defense as it relates  
23      to that would be improper of shifting the burden a little bit,  
24      Judge.

25           THE COURT: All right. Thank you.

1 MS. KANOF: May I, Your Honor?

2 THE COURT: Yes, ma'am.

3 MS. KANOF: First, Your Honor, I have three exhibits  
4 I'd like to put into evidence for purpose of this hearing.

5 Mr. Hanshew has -- and I'll deal with some of the  
6 things he said now. Let me correct a couple of things. And  
7 this may have just been a misunderstanding. We never said we  
8 weren't going to call these witnesses. And in fact, in an  
9 e-mail that we sent last week, we specifically said that the  
10 government has been provided with a contact information for  
11 Buendia's attorney.

12 At this time the government is not reaching out to his  
13 attorney to see if Mr. Buendia is available as a witness. If  
14 he would just contact him, please let us know and we'll give  
15 you the contact information, which we did. We didn't say we  
16 weren't calling him. He may have gotten that impression  
17 because we asked Mr. Gonzalez to be the front man. He was --  
18 Mr. Gonzalez is in South Carolina. This was done  
19 telephonically. I know he spoke with Ms. Franco. But we never  
20 said we were not going to call these witnesses.

21 \*\*MR. GONZALES: Your Honor, excuse me, just so that  
22 it's clear. I did speak to Ms. Franco and Ms. Franco asked  
23 about a continuance. We cannot agree to a continuance. We can  
24 forego having to call all of these witnesses. I just wanted to  
25 make sure that's what --

1 MS. KANOF: What we said was --

2 THE COURT: You just wouldn't use that evidence and so  
3 we don't need the continuance.

4 Mr. Hanshew is saying that there might be some like  
5 smoking gun kind of stuff --

6 MS. KANOF: Right.

7 THE COURT: -- in all of this Spanish stuff that's in  
8 here and we need time to find the smoking gun.

9 MS. KANOF: Well, I think that's a little disingenuous  
10 and I'm going to give you some exhibits to show why.

11 But what we said was if the Court wants to grant a  
12 continuance and it'll stop a continuance, then we won't call  
13 them if it's for the purpose of cross-examination.

14 However, Government's Exhibit Number 1, we've given  
15 them notice of the problems that both of these employees have.  
16 And one of the things Mr. Hanshew said is, you know, they want  
17 months, because now they want to get evidence out of Mexico.  
18 Well, they've had an opportunity to do that, because we gave  
19 them notice in May of most of the problems.

20 On May 11th, I'm going to start first with  
21 Mr. Buendia. And by the way, Mr. Buendia was an engineer. He  
22 wasn't in a decision making capacity. The two people that were  
23 in the decision making capacity was an individual named Laris,  
24 L-A-R-I-S, who was fired. Well, actually, he was told to  
25 resign or he'll be fired a long time ago, and a man by the name

1 of Ramos. Ramos was also fired from C.F.E. They were found  
2 culpable with -- and I don't know exactly why they were fired,  
3 because they're not our witnesses and we didn't go into it. So  
4 there were some people from C.F.E. that were fired. These were  
5 administrative. And the way it's been explained to me, the  
6 attorney for C.F.E. -- there's two -- a man by the name of  
7 Gonzalez Felix, who represents both C.F.E. and \*\*Pemix, and  
8 lives in Mexico City, and his partner Mark Maney, M-A-N-E-Y,  
9 who I know defense counsel has spoken with recently as well as  
10 in the past, who works and lives in Houston. And Mr. -- my  
11 information comes mostly from Mr. Maney, who is fluent in  
12 Spanish, and in fact, he's done a preliminary translation of  
13 the Moreno document, so that we can get an understanding of  
14 what this document is really all about, but we did say in an  
15 e-mail from Mr. Gonzalez to defense counsel.

16 Also, today, we interviewed Eduardo Buendia, a manager  
17 at C.F.E. He reported that a procedimiento (Spanish) was  
18 initiated against him based on an accusation that he should not  
19 have enabled the modification of the contract from the letter  
20 of credit to the pledge. He received a 30-day suspension, and  
21 because a judge agreed with him, granted an amparo (Spanish)  
22 and this matter is pending. That was May 11th.

23 So we gave them notice and they could've at that time  
24 investigated, because we did tell them that we were calling  
25 three Mexican witnesses and we told them that we were talking



1 to them on that during that week. And Buendia was one of them.  
2 Buendia did not come to El Paso. We talked to him via video.  
3 The other two did, Moreno and a man by the name of Cortes,  
4 which is spelled with an "s." The other two, Moreno and Cortes  
5 are attorneys. And -- not high level, but they in the legal  
6 department of C.F.E. So they had notice as early as May 11th.

7 On Government's Exhibit 2 is a letter that was sent to  
8 them by myself and AUSA Arreola on the May 9th, two days before  
9 this. We were meeting our *Giglio* deadline. In Government's  
10 Exhibit 2, and on page three, the -- after talking about some  
11 of the other witnesses and potential *Giglio* issues, it says  
12 Francisco Moreno Nuñez, who we're talking about -- this Paco  
13 Moreno -- Mr. Moreno related to the government that on or about  
14 October of 2014, he was notified of an investigation against  
15 him by Organo, O-R-G-A-N-O, Interno, I-N-T-E-R-N-O, de Control  
16 of the C.F.E., the comptroller's office, as follows. And then  
17 this exhibit will show the Court we inserted into our letter  
18 the three charges in Spanish. This was on May 9th.

19 Then following up after that, a couple of days later,  
20 we provided to them a 13-page document that contained all of  
21 the charges against Mr. Moreno. What's been explained to the  
22 government by Mr. Maney is that this is an Administrative  
23 process that's similar to the American national labor relations  
24 board where they look at how individuals acted within the  
25 confines of their employment.

1           So, this is not news and it had at least 13 pages  
2 summary with regard to Moreno since the middle of May or  
3 earlier. And they've been noticed of the problem with Buendia  
4 since May 11th. So if they were so concerned that this was  
5 exculpatory for their client, they could've reached out and got  
6 all of this other information. Certainly, there may -- I don't  
7 know how ever long Mexico is, but there could have been  
8 interrogatories. There could have been depositions. There  
9 could've been all kinds of things that now they say they want  
10 to seek for a continuance.

11           So I want to talk a little but more -- that's  
12 government's Exhibits 1, 2 and 3, we move they be admitted so  
13 that the Court can peruse --

14           THE COURT: Have you shared those with Mr. Hanshew?

15           MS. KANOF: Well, we sent them to him.

16           THE COURT: Okay. Well, just make sure he agrees  
17 that's what you sent him.

18           MS. KANOF: Yes, sir. I think we do have copies that  
19 we can provide to them now.

20           THE COURT: All right.

21           MS. KANOF: May I approach them?

22           THE COURT: Yes, ma'am.

23           MS. KANOF: With regard -- one of the things that  
24 surprised me that Mr. Hanshew said was that he wanted to admit  
25 these -- you know, the thing that I'm most concerned about is

1 the time that we needed for a certified translation. I don't  
2 understand that. Because the only reason you would need a  
3 certified translation, especially from an office that has  
4 Spanish speakers, and I can understand it's complex and it  
5 might take a translator, but you don't ever need a certified  
6 translation in this case, because there's nothing admissible  
7 about these documents.

8 These documents are a judge's or an administrator's  
9 opinion. And I have case law regarding those admissibilities  
10 and two Rules of Evidence regarding the admissibility of such a  
11 document.

12 \*\*\*\*\*

13 \*\*THE COURT: I'm not sure he wants to admit the  
14 documents.

15 MS. KANOF: He said it.

16 THE COURT: Well, but I think he wants to find some  
17 top secret stuff in there that his client is not guilty.

18 MS. KANOF: I understand that, Judge, but he actually  
19 said that he wanted to admit it. And I wrote it down and he  
20 was talking and it concerned me, so I just happened to have  
21 the --

22 THE COURT: I suppose, and I don't know all of the  
23 possible ways it might be admissible. I guess there is a way  
24 it could be admissible. We won't know that until we try it and  
25 so...

1 MS. KANOF: I have case laws and rules of evidence  
2 that say it's not.

3 THE COURT: That would be my gut feeling. My gut  
4 feeling has often been wrong and something comes up and all of  
5 a sudden something from some weird happening at trial it  
6 becomes admissible.

7 MS. KANOF: I will tell the Court --

8 THE COURT: I'm not saying that right now looking at  
9 those you can come up with any reason why they would be. I  
10 think his purpose is he thinks there's either something hidden  
11 amongst all of that to show his client.

12 MS. KANOF: What I'm talking about is this great  
13 lengthy period of time that it takes to get certified and  
14 translated by a certified interpreter, because I don't see the  
15 need for a certified translation, Rule of Evidence 608(a) and  
16 Rules of Evidence 801(c). And I will quote the closest and  
17 most analogous case I could find is not a reported case, but it  
18 is an -- out of California.

19 And there was a police officer who -- who had been  
20 written -- a *Brady* letter had been written about him. And the  
21 ruling was even if the *Brady* letter arguably contains an  
22 opinion about the officer's truthfulness, which is the only  
23 time *Brady* and *Giglio* would be admissible, the letters  
24 nevertheless would be inadmissible as opinion evidence under  
25 rule 608, because the letter itself is inadmissible hearsay, a

1 statement, other than one made by the declarant while  
2 testifying at the trial of a hearing offered into evidence to  
3 prove the truth of the matter asserted. So what I'm saying is,  
4 that would be like printing something out of an opinion out of  
5 Westlaw and saying, you know, I want the jury to see this  
6 because it's true, and that's just -- it's just not the law.  
7 And so really we're just talking about understanding it to  
8 cross-examine.

9 So you can cross-examine pursuant to *Giglio* if there's  
10 something in there that's an inconsistent statement, a  
11 statement that's inconsistent with what the person testified  
12 to. And again, if the Judge rules -- if you want to rule, Your  
13 Honor --

14 THE COURT: Is this an opinion from an administrative  
15 judge? Do they have quotes from various witnesses?

16 MS. KANOF: That, not that I know of. Mr. Maney gave  
17 me a summary of what --

18 THE COURT: Because I suppose if they interviewed  
19 witnesses --

20 MS. KANOF: Yeah, that's why I --

21 THE COURT: -- some witness under oath said this and  
22 that witness testifies here, then --

23 MS. KANOF: Well, what Mr. Maney has said was that  
24 this was -- this was an administrative decision and that  
25 particularly -- let me talk about Moreno first -- that with

1 regard to Moreno that the gravamen of it was that Mr. Moreno  
2 was present when the bids were opened. The bids were opened on  
3 November 19th of 2009, which is the same day they were granted  
4 to C.F.E.

5 So, first of all, it's the first time he saw it, the  
6 economic proposal that was submitted.

7 And by the way, I just want to point out to the Court  
8 that Mr. Delgado wrote the proposal, and he -- it's in  
9 Spanish -- and he holds himself out to be, to everyone, an  
10 international lawyer, so I guess he speaks legal Spanish.

11 And that on the day that they opened it, he failed to  
12 point out its deficiencies. He failed to point out that  
13 pursuant to Mexican law that the company F.G.G. did not meet  
14 the criteria to win the bid. The other two bidders were  
15 Siemens, S-I-E-M-E-N-S, and General Electric. And basically  
16 the issue here was F.G.G. had only been in existence for seven  
17 days. And how could this little Podunk, brand new LLC that  
18 Mr. Delgado had created have the experience, because I think  
19 they're required to have ten years experience, the company,  
20 have the experience with generation of electricity.

21 And in order to get to bid, what has been explained to  
22 us by witnesses is that what they did was they relied, since  
23 they were -- they had a subcontractor that was selling the  
24 generators, which was Mitsubishi, and since Mitsubishi had a  
25 lengthy relationship with C.F.E., had already sold them

1 identical generators, that it was Mitsubishi's good will that  
2 they were using in order to get the contract. There are also  
3 other benefits; the three generators were already in existence.  
4 And had they picked Siemens or General Electric, they would  
5 have to wait two years. There were other reasons.

6 There's no accusations of criminal conduct or fraud  
7 according to Mr. Maney of either Buendia or Moreno, but  
8 dereliction of duty is the way he explained it to me. So  
9 then...

10 THE COURT: But that has nothing to do with  
11 Mr. Delgado, right?

12 MS. KANOF: No. And that's my other point, Your  
13 Honor, is Mr. Delgado is basically charged with having written  
14 a letter to reroute the money from the F.G.G. Wells Fargo bank  
15 in El Paso to his Turks and Caicos account and then having  
16 spent all of it on himself, basically all of the money that or  
17 \$18-million.

18 THE COURT: So 23 percent didn't go to the other guy?

19 MS. KANOF: No, Your Honor. And there's all kinds  
20 much changes in contracts. I would very much like to call  
21 Mr. Buendia. And I think Mr. Moreno and Mr. Buendia would make  
22 excellent witnesses. They are both on appeal -- had they both  
23 had the right to appeal.

24 What initially happened is that the last time when we  
25 sent these letters this decision had not come out. They both

1 had their punishments suspended. Buendia being fired --  
2 initially, he was going to be suspended and then he was going  
3 to be fired. That was suspended so he could appeal. Moreno  
4 was always only going to be suspended for a certain number of  
5 months and that was also suspended.

6 So these decisions came out. They got sent to us a  
7 week ago Friday. Mr. Maney had a hard time getting them to us,  
8 because they were so big, so we had to get a drop box. And  
9 basically what happened is Buendia, this body that wrote the  
10 opinion, did not again suspend his firing. They didn't -- but  
11 he can still appeal, which is why he has a lawyer. He also has  
12 the option of resigning instead of appealing and getting all  
13 of -- keeping all of his benefits. This is according to  
14 Mr. Maney. I obviously don't know him individually.

15 Mr. Moreno was suspended again. He's still working  
16 for C.F.E.. So --

17 THE COURT: His -- what his --

18 MS. KANOF: -- his suspension was suspended.

19 THE COURT: Right. Okay.

20 MS. KANOF: Yeah. He is still working for C.F.E.

21 At the time, because Mr. Buendia had an attorney and  
22 we're busy preparing trial, we didn't reach out to the attorney  
23 yet. Mr. Gonzalez is out of town. We just hadn't made the  
24 final decision.

25 Mr. Maney calls us and says, we don't control



1 Mr. Buendia because he's in the status of being fired, but he  
2 has communicated -- he still talks -- I think he talks to  
3 Mr. Moreno as a friend. He is still willing to come and  
4 testify in the meantime since we talked to them. And  
5 Mr. Moreno is also willing to testify. I will confide to the  
6 Judge, they didn't want to come over the (Spanish) of September  
7 weekend, because it is a weekend holiday, but they're still  
8 willing to testify.

9 We are willing to forego their testimony if it means a  
10 continuance. This would be the tenth continuance and the  
11 reality is we are not going to call these witnesses in the  
12 first week of trial. And we don't go to trial for another  
13 week, so defense counsel would have two weeks to digest in  
14 Spanish the meaning of those documents. But with regard to  
15 them wanting all of this time to investigate this, they were  
16 already on notice in May that these two witnesses had these  
17 issues, because we told them, we provided, you know, based on  
18 our responsibility to do that.

19 What Mr. Maney told me with regard to Mr. Moreno is  
20 that he is an compliance officer, that he did not have the  
21 authority to award the bid. So he is just being criticized for  
22 not having been diligent in identifying the deficiencies in the  
23 bid process and communicating them. He have should have seen  
24 and noted the disqualifying factors. That's a translated quote  
25 from Mr. Maney.

1           And with regard -- let's see -- that it says that  
2       there's -- that C.F.E. shouldn't approved F.G.G.'s bid on  
3       multiple levels because they violated the bidding rules, which  
4       requires previous experience and C.F.E. had only been in  
5       existence for seven days.

6           The administrative judge said Moreno had the  
7       responsibility to ensure that all billing requirements were  
8       fulfilled or to disqualify the bid, but never ever had the  
9       authority to decide who would win the bid. And that's pretty  
10      obvious because the bid was opened -- Mr. Moreno told us that  
11      the day that it was opened was, you know, he saw the package,  
12      and they opened them and granted them on the same day.

13           So, the government feels pretty strongly that waiting  
14      two and a half years for trial is causing problems.

15           The other thing is, Judge, this is -- I'm grateful to  
16      Mr. Hanshew that he pointed out to the Judge this isn't our  
17      fault that we just got these documents, that we didn't see this  
18      coming, but we dutifully provided it. We didn't even look at  
19      it before we sent it to them. We just put it in our drop box.  
20      We had somebody copy it and send it to them. We've still not  
21      reviewed the documents.

22           But I will tell the Court, we have a witness coming  
23      from England. We have these witnesses coming from Mexico. And  
24      it is not the first time we've had to make arrangements, not  
25      just airline flights, but lodging arrangements.

1           And I think the bottom line question is that they are  
2 asking for time -- the time for certified transcription is not  
3 necessary. The time to understand it, they have, a couple of  
4 weeks. And whether or not we gave it to them in case there  
5 might be some information they might want to use to  
6 cross-examine out of abundance of caution, the reality is it's  
7 an administrative hearing and there is a case. There are cases  
8 that say that administrative decisions, disciplinary decisions,  
9 are not *Brady* and are not *Giglio*, because basically, unless  
10 it's an inconsistent statement, *Giglio* is about the likelihood  
11 of truthfulness or lies, and that document, there's no  
12 indication -- I asked Mr. Maney, is there any indication that  
13 he lied to anyone. And that's really the only thing. They  
14 could only use extrinsic evidence. They can only  
15 cross-examine. It's only *Giglio* if there is a finding that he  
16 lied, that it effectuates the impeachment for -- the rules say  
17 that impeachment for truthfulness -- character of truthfulness  
18 and honesty is the only thing you can really cross-examine on  
19 from extrinsic evidence. And it just -- it doesn't meet the  
20 test at this point in time, and if it does, they've got two  
21 weeks to figure it out.

22           Anything else, Your Honor?

23           THE COURT: All right. And so anything about those  
24 two documents that impacts the issue about pledging the  
25 generators as collateral contract --

1 MS. KANOF: Here's the issue with the pledge.

2 I will tell you that Mr. Moreno, as an attorney,  
3 participated in drafting the original draft of the pledge, but  
4 he had an honest belief that Mr. Adams had given permission for  
5 the pledge because Mr. Delgado --

6 THE COURT: Because he had that letter.

7 MS. KANOF: Right -- told him that. Right.

8 I mean, these are not co-conspirators. These are not  
9 individuals -- we've traced the money as best we can, all the  
10 money that was -- all of the money that went into the Turks and  
11 Caicos account. And you know they're still working for C.F.E.  
12 I don't know if they would if they got all of this money, this  
13 \$6-million that's missing.

14 But after talking to him there -- I mean, it's hard  
15 for me, because I think you need to speak the language to  
16 understand internation, but from all of the people that we've  
17 dealt with, including counsel for the companies, they -- you  
18 know, they didn't think that they were co-conspirators and we  
19 can't find any money that went to them. So it's not like we  
20 have a co-conspirator.

21 We have public servants that didn't pay attention and  
22 probably -- and it appears because they were not that high. He  
23 did participate in drafting -- Mr. Moreno did participate in  
24 drafting it, but then sent the draft to his boss the chief  
25 attorney and he didn't finalize it. And he did it based on

1 information that was provided to him by Mr. Delgado.

2 So, the issue of the pledge is only that -- and  
3 it's -- and within the evidence -- I will tell the Judge, Your  
4 Honor, we have about 150 or 160 exhibits. About 100 of them  
5 are e-mails. Mr. Buendia and Mr. Moreno -- Mr. Moreno is on  
6 two e-mails. They are not substantive, just acknowledging  
7 receipt. And Mr. Buendia is also I think on two e-mails. And  
8 they have letters attached to them, to their transmission  
9 e-mails with letters attached. They are Buendia's letters that  
10 Buendia will testify that he did not write that are forgeries  
11 of his.

12 And I think we can corroborate that. But all of that  
13 evidence was given to defense counsel two-and-a-half years ago.

14 So, I don't want to misrepresent that he had anything  
15 to do with the pledge, because did he draft it, but based on  
16 information that was provided to him thinking that John Adams  
17 had given him permission. And -- but the gravamen of the  
18 indictment is the stealing of the money. And the rest is just  
19 an explanation of how -- of the interworkings of how that money  
20 could be stolen. And then of course the money laundering. And  
21 neither of these defendants had anything to do -- the  
22 authorization to transfer -- to change the wiring instructions  
23 from Wells Fargo to the Turks and Caicos was done by Laris.  
24 And there was an attempt to change it.

25 THE COURT: And he's a defendant?

1 MS. KANOF: Huh? No, he's not. We didn't charge  
2 anybody in Mexico.

3 THE COURT: When you said either of these defendants,  
4 who were you talking about?

5 MS. KANOF: Oh, did I say --

6 MR. GONZALES: You misspoke.

7 MS. KANOF: I misspoke, Your Honor. I meant either of  
8 these individuals.

9 Had we had access, we didn't charge anybody, because  
10 the likelihood of getting an extradition on a white color, in  
11 my experience (indiscernible), and frankly we didn't have the  
12 evidence and beyond a reasonable doubt evidence, just strong  
13 suspicions of Ramos and Laris and so did C.F.E., which is why  
14 they were fired.

15 But with regard to the people who had the authority to  
16 make decisions that assisted Mr. Delgado, they were Ramos and  
17 Laris, and they were fired a long time ago. So that -- I  
18 don't -- I don't think any action and certainly, um, we are  
19 not -- I will tell the Court that, um, Mr. Moreno does not come  
20 into the, um -- the inner workings of the indictment, and  
21 neither does, um, Mr. Buendia with the exception of the fact  
22 that Mr. Buendia was at C.F.E. one day when Mr. Delgado walked  
23 in and said here's Mr. Adam's letter and introduced him to  
24 someone that turns out was not John Adams -- we actually have  
25 the security stuff from C.F.E. to prove it was not John

1 Adams -- and introduced somebody as John Adams and handed him a  
2 letter. The letter had three paragraphs. The ultimate letter  
3 that Mitsubishi got was only two paragraphs and it wasn't even  
4 the letter that was ultimately used. And of course we have  
5 ample evidence that the letter was a forgery. So he took that  
6 letter, Mr. Moreno took that letter and took it and gave it to  
7 Mr. Buendia who gave it to his bosses. But that would be the  
8 only involvement they would have had.

9 So, I understand the Court has to make a decision.  
10 And I will tell the Court that if the Court makes a decision --  
11 I mean, if it hangs in the balance as to a continuance as to  
12 whether or not those two witnesses testify, as much as we want  
13 them two, we'll give them up, because we don't have to have to  
14 have them, I guess. I guess, we should ethically, and to do  
15 our jobs correctly, but I think it's more important to try this  
16 case on the ninth setting and not have a tenth setting,  
17 especially in light of the fact that defense counsel had notice  
18 of these issues and could have issued letters (indiscernible)  
19 in May, if it was that important.

20 THE COURT: Okay. Thank you.

21 MR. HANSHEW: Just a couple of reply commentaries.

22 I'll start out with I think one of the most glaring  
23 errors and the argument from the government today about this is  
24 that they haven't even reviewed the documents. The quote was  
25 that the government still hasn't reviewed the documents and

1 instead what was offered today as a response and objection to  
2 everything that we pointed out, was what C.F.E.'s outside  
3 counsel Mark Maney told them about everything here; what he  
4 told him in the meaning of theses documents were, both by word  
5 by word what that supposedly is, what the conclusion is, which  
6 I found curious that someone could sum up, you know, a 300-page  
7 ruling in a sentence or two, that that was the totality and  
8 that's what it meant.

9 Mr. Maney's explanations to the government about the  
10 final nature or not, about this is the equivalent of N.L.R.B.,  
11 I mean all of these come from C.F.E.'s outside counsel to say  
12 that C.F.E.'s outside counsel has a specific interest in mind  
13 when its presenting its version of these documents, both in  
14 content, substance, procedural meaning, Mexican law  
15 interpretation. I mean all of these are all easily  
16 characterized as self-serving, I mean, absolutely to the nth  
17 degree, and the Government has no idea to say otherwise about  
18 it. They haven't even reviewed it, Judge.

19 In terms of the discussion about the exhibits that  
20 were provided to us, I think that's also very telling as well,  
21 which is, you know, in May, there's one that says that Buendia  
22 received a 30-day suspension, and that the Judge -- this is  
23 Exhibit 1, Judge, at the bottom -- and because a Judge agreed  
24 and then granted and amparo's the matter as pending, well,  
25 that's a big difference from what we received last week which



1 is a, you know, nearly 300-page decision terminating his  
2 employment with C.F.E. To say that this would have triggered  
3 the thought that the files inclusion be what it is and what we  
4 did receive, I think that's a pretty large leap to take.

5 And the same thing goes with if you look at Exhibit 2,  
6 page three, about Francisco Moreno, that he -- in 2004, he's  
7 notified of investigation by the comptroller's office. Again,  
8 I mean that -- that would in no way lead a person to believe  
9 that it would be another 300-page document suspending him for  
10 six months from his work, let alone all of the nuance details  
11 of what led to those conclusions, which obviously weren't  
12 provided here or even suggested really in this, Judge.

13 So, I think if you look at those -- I mean, again,  
14 we're back to -- I'll just say in closing to the Court, is we  
15 have 600 pages of document that no matter how the government  
16 would like to characterize it and no matter how much C.F.E.'s  
17 self-serving outside counsel would like to characterize this,  
18 these witnesses, until last week, were being prepared to come  
19 here to testify next week in this courtroom against  
20 Mr. Delgado. They've vanished. They are gone. One is gone to  
21 Mexico. I mean literally. Okay. The other one, you know,  
22 we'll see what happens. But again as Mr. Gonzalez clarified up  
23 there and made it clear, they had said they would -- if it  
24 meant not continuing, they would jet us in this witness.

25 I mean to tell my client, hey, you know a week and a

1 half before trial we receive all of these documents about these  
2 individuals that were involved in this as admitted to by  
3 Ms. Kanof here about the pledge document which is there, then  
4 it's integral to the indictment. Ms. Kanof explained and said,  
5 well, all of that is just, quote, explanation. Well, it's  
6 called not explanation. It's called the scheme and artifice to  
7 the fraud. Everyone knows in wire fraud cases that's not an  
8 explanation. That is part of the charge even incorporated into  
9 the counts. As you go through each one of those counts, it  
10 incorporates the scheme and artifice. That's the heart of wire  
11 fraud. So what she characterized as explanation, it says what  
12 it is. It's the scheme and artifice. It's what this case  
13 entails. Is it every piece of it? No, of course not. But it  
14 is an integral part of it. That's not been disputed. It's  
15 been, I think tried to mitigate and try to diminish the  
16 importance of it, but she frankly had to admit that the pledge  
17 and his involvement and accepting of it and review of it is  
18 part of this charge, Judge.

19           You know, this is not something, again, that we could  
20 have anticipated, nor could they, that's why I said this is  
21 nobody's fault. But the due process component of this for, you  
22 know, Mr. Delgado is that he has an opportunity vis-à-vis his  
23 counsel to review, investigate these materials and be able to  
24 use them or prepare them for the trial proceedings, and that's  
25 not a possibility.

1           THE COURT: Use them in the trial proceedings if they  
2 are in fact useful.

3           MR. HANSHEW: Correct.

4           THE COURT: Because they may not be.

5           MR. HANSHEW: That's always the possibility. And  
6 there may be, as this Court knows, I mean, criminal  
7 investigations bolt from the prosecution side and from the  
8 defense side can take many different paths that we may not  
9 anticipate, but to not be able to study this, get it prepared  
10 and be able to take those next steps, it's left him without the  
11 due process and that's just unacceptable, Judge. That's why  
12 we're asking for this.

13           Again, it is clearly nobody's fault. This is the  
14 nature of the beast, frankly, when you have a prosecution that  
15 involves a foreign government and foreign witnesses and the  
16 such. I mean it's easy for the government to say, oh, you  
17 know, we just left these guys alone, because you know the reach  
18 of our, you know, extraterritorial jurisdiction or being able  
19 to extradite them or difficulties, that's the Department of  
20 Justice. Imagine for the office of Federal Public Defender  
21 being able to do the same thing. It is a struggle and this is  
22 something that's going necessitate time for us to be able to do  
23 this. We wouldn't be asking for this for any other reason.

24           You know as much as the government explained they  
25 wanted to move forward on this, you know, we can can understand

1 the same, but at this point, I've spoken and met with  
2 Mr. Delgado about this, and he is in agreement with this  
3 continuance, Judge. And we've been reviewing the documents  
4 with many him as fast as we can, but this is going to take that  
5 time, so we're asking the Court to consider, Judge.

6 THE COURT: All right.

7 Ms. Kanof, I'm going to take up your offer that you  
8 not use those witnesses.

9 I'm going to deny your motion for continuance. I  
10 think we need to get this case tried.

11 Mr. Hanshew, we're going have a hearing on Thursday to  
12 tie up some of these loose ends. If you have some additional  
13 evidence or matters you want to make of record, I'm happy to  
14 let do you that on Thursday as well. After you've had a chance  
15 to review some of those exhibits, you may have something you  
16 want to put on the record. All right.

17 Then we'll see you all on Thursday.

18 COURT SECURITY OFFICER: All rise.

19 (Proceedings conclude.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET  
Kathleen A. Supnet, CSR

September 7, 2018  
Date

KATHLEEN A. SUPNET, CSR